SUBMISSION TO THE SENATE INQUIRY:

Australian winegrape purchases code of conduct

October 2024

FOR INDUSTRY, BY INDUSTRY

Australian Grape & Wine

Australian Grape and Wine Incorporated (Australian Grape & Wine) is Australia's national association of winegrape and wine producers and is recognised as a representative organisation for winegrape and wine producers under the *Wine Australia Act 2013* and is incorporated under the *SA Associations Incorporation Act 1985*.

Australian Grape & Wine's role is to help forge a political, social and regulatory environment - in Australia and overseas - that enables profitable and sustainable Australian Grape & Wine businesses. To do this, activities focus upon the objective of providing leadership, strategy, advocacy, and practical support. Australian Grape & Wine has a broad membership base representing small, medium and large winemakers and winegrape growers. Policy decisions taken by the Australian Grape & Wine Board require eighty percent support, ensuring no single category can dominate the decision-making process and guaranteeing policy is only determined if it provides significant industry benefit. In practice, most decisions are made by consensus.

To date, Australian Grape & Wine's Board has maintained the view that the voluntary Code of Conduct for Australian Winegrape Purchases (the Code) serves as a valuable tool for managing grower winemaker relationships and has the potential to deal with the issues in the market. However, the fact that there remain several large winemakers that have not signed is an ongoing concern (albeit, nor are they members of Australian Grape & Wine). Australian Grape & Wine has little oversight as to whether they are meeting the basic standards of conduct that are set out in the Code. Given the low likelihood of an increase in the number of signatories, prescribing a voluntary Code would offer very little benefit to growers.

Summary

Australian Grape & Wine welcomes the opportunity to contribute to the Grape and Wine Regulatory Impact Analysis.

Australian Grape & Wine maintains the view that the Code of Conduct for Australian Winegrape Purchases remains a valuable tool for building relationships between growers and winemakers that are fair, equitable and mutually beneficial. Being an industry-led Code it can be responsive and has the flexibility to deal with some of the complex issues in the winegrape market. The Code can, and will, continually be reviewed and strengthened over time to incorporate new science with respect to winegrape quality assessment best practices and potentially to shorten payment terms once certain related issues are resolved. For example, there is a need to ensure that signatories are not at a disadvantage over non-signatories and that the Code does not contradict legislation such as *The Wine Grapes Industry Act 1991 (SA)*. Australian Grape & Wine is of the understanding that some signatories' terms are already more favourable than the minimum standard set under the Code. Whilst of the opinion that since its 2020 review the Code is proving effective, Australian Grape & Wine is also very amenable to further suggestions as to how the voluntary Code could be further improved.

It is critical that issues downstream in the supply chain with the retailers are resolved concurrently if there is to be any regulation of the winegrape market. This will avoid causing harm to existing wine businesses at a time that they are already suffering financial hardship. Whilst it is recognised that there remain opportunities to improve business conduct between certain winemakers (particularly non-signatories to the voluntary Code) and growers, Australian

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Grape & Wine's preferred option is to retain its voluntary Code, until existing improvements are given time to take effect. Of significance will be a requirement for all wine producers obtaining the certification required to display the wine sector's nationally accepted sustainability logo to be signatories to the voluntary Code. Similarly, all Australian Grape & Wine Board and membership committee members who purchase fruit must be signatories as of elections in November 2024.

Notwithstanding Australian Grape & Wine's past policy position in favour of a voluntary Code, it is acknowledged that over the last six months, the Wine Grape Council of SA has undertaken efforts to educate their grower base about Codes and was in the process at the time of writing this submission of conducting a grower survey to better understand grower sentiment. While Australian Grape & Wine does not wish to pre-empt the findings of this survey, views may have shifted on the adequacy of the voluntary Code and those views should be included in the formation of a balanced opinion by this Senate Committee as to the best solution(s) for the industry. Growers have been informed about the potential costs and benefits of other models, including mandatory codes and prescribed voluntary codes and it is expected there will not be a uniform view as to the optimal way forward. Growers are a highly valued part of the Australian Grape & Wine membership base, and the entire wine sector. Therefore, all grower concerns must be taken into account, as must those of winemakers, small and large. It is important that this inquiry is a balanced one and remains cognisant to the fact that (although winemakers may not be the squeakiest wheels at the moment), there are consistent and widespread concerns about the consequences that a prescribed Code could have for these businesses, particularly if not designed with a thorough industry wide consultation on the contents of that Code, uptake of learnings from the voluntary Code and a whole of supply chain approach through to retail.

The sense of urgency from certain cohorts about the need for regulation must be considered in the context of today's set of circumstances. Today's circumstances have eventuated as a result of a crisis beyond any wine business's control. As the committee would be well aware by now, there has been a global downturn in wine production, Consumption is decreasing globally and there is also a global oversupply of wine that is seeing many governments subsidising the removal of grapevines and the distillation of stock. [1] For Australian wine producers, this has coincided with a three year hiatus in Australian wine exports to China due to tariffs related to countervailing and dumping allegations. This situation effectively eliminated approximately twenty percent of Australia's wine market overnight. Bulk prices for Australian reds are reported to be the lowest of all Australia's major competitors and have been for the past 12 months. [2] As a flow on effect, several prominent players in the industry are publicly reported to be or have been suffering financial hardships and making significant changes to their business structures or undergoing recapitalisation in order to survive the storm. The Anderson report (2024) highlights that "Australia's stock-to-sales ratio for red wine is now close to twice its 2010s average, creating cash flow problems and leaving little room in storage tanks for the next vintage." Unsold wine in premium regions, or premium wines sold at low prices, puts downward pressure on prices in warm inland regions such that those growers rarely escape the effects, [3] however they are certainly not the only regions in the wine sector who are under duress.

[1] Australian Bureau of Statistics. (2019). Apparent Consumption of Alcohol, Australia. https://www.abs.gov.au/statistics/health/health-conditions-and-risks/apparent-consumption-alcohol-australia/latest-release
[2] Ciatti (2024) September Wine and Grape Market Report [Wine and Grape Market Reports from Ciatti Company]
[3] https://www.agriculture.gov.au/sites/default/files/documents/wine-industry-crisis-ways-forward.pdf

The global downturn has been exacerbated by a domestic retail situation that is far from being ideal. Market dominance is impacting the competitiveness of wine producers due to vertical integration of retailers who are now competing with wine producers for shelf-space and enjoying a competitive advantage for a range of reasons. These include asymmetric availability of customer information, a market power advantage in their supply negotiations and potentially also favourable taxation conditions. Although this situation is beyond the scope of this inquiry, it is outlined in various submissions including the live Grape and Wine Regulatory Impact Analysis being led by Dr Craig Emerson. The suppressed market for wine is the major (if not only) contributor to low grape prices. It is these very low grape prices that appear to be the underlying issue fueling concerns about the winegrape market. It is important for the inquirers to make this important differentiation between legitimate market forces and inequities in the market.

If Government intervention in the winegrape market occurs in isolation to the retail market as an outcome of this inquiry, then it could lead to the collapse of a wine industry already in trouble due to a set of circumstances beyond its control. Poorly designed regulatory intervention could simply lead wine producers to avoid transacting in parts of the supply chain that are covered under the Code. Either of these situations would be to the serious detriment of growers who are currently dependent on the survival of wine producers for their very own survival.

As this submission will make clear, the grape and wine market in Australia is complex and any recommendations made by this committee should contemplate the potential consequences along the value-chain. Australian Grape & Wine is keen to explore options to ensure a more sustainable and profitable value-chain in the future. In exploring these options, it is critical that policymakers take a balanced and evidence-based approach that considers the views of all industry participants.

a. the structure of, and any inequities in, the Australian winegrape and wine processing market;

Grape and wine businesses are unique in agriculture and unique from other liquor industries. There are over two thousand producers and approximately six thousand grape growers, a vast majority based in regional Australia; for some their businesses are also their family homes. The sector has traditionally been a leader amongst agricultural industries showcasing the regional and economy wide benefits of promoting locally grown and value-added production. These businesses support employment of over 160,000 people in winegrape growing and production, regional exports and food and wine tourism, making a significant contribution to Australia's rural and regional economies and driving economic growth. Ensuring fair and equitable pricing throughout the value chain is essential for the ongoing prosperity of all these businesses.

Some businesses primarily grow their own grapes for wine production, supplementing with relatively small amounts of purchased fruit. Others do not own vineyards, and rely completely on purchased grapes, adding to the diversity of the market. Although there are several large players, most wine and winegrape producers fall under $10m turnover however the top five producers (all of whom are signatories to the Code of Conduct) account for approximately fifty percent of winegrape intake. [4] Based on estimates from the Wine Australia vintage survey, there are twenty producers above 10 000 tonnes. It is likely that only about fifty process more than 2000 tonnes, with the remaining classed as small winemaking businesses. [5] Of these small winemaking businesses, many are based in

[4] The top 5 producers are based on latest estimates by Winetitles (2022) [Australia's largest wine companies by winegrape intake - Winetitles](#) and Wine Australia national vintage report (2022)
[5] Size segment definition of 'small' is based on membership categories in Australian Grape & Wine's constitution.

cooler climates, and some do not have any, or at most small, vineyard holdings and purchase most or all of their grapes. Given their small scale, they are unlikely to exert market power over growers. In fact, there have been reports that an inverse power imbalance exists in some circumstances. [6]

In Australia's inland regions (the Riverland in South Australia, Murray Valley-Swan Hill of Victoria/New South Wales and the Riverina in New South Wales) there are a large number of wine grape growers selling fruit to a smaller number of wine businesses. It was in these regions that the ACCC focused its Wine Grapes Market Study of 2019, which sought to explore some of similar themes to those which this committee is considering. Despite its inland focus, larger temperate regions such as Langhorne Creek, Limestone Coast, Clare and Heathcote share many of the same market characteristics as the inland regions.

Vertical integration in the wine sector is common, with thirty-one to thirty-five percent of winegrapes being grown and made into wine by the same wine producer that produced the grapes. [7] Sixty-five to sixty-nine per cent of grapes are grown by a separate entity (a grower) and sold to a wine producer. Many of the wine retailers also grow and make wine themselves and then bottle what is referred to as a "buyers' own brand". They can alternatively purchase wine in bulk for the same purpose or they can carry private label products exclusively available at their stores. It is estimated that wine retailers' buyer own brands comprise thirty five percent of the domestic wine market. [8] A more detailed analysis of the wine sector is provided in our submission to Dr Craig Emerson's Grape and Wine Regulatory Impact Analysis.

Of the approximately 2050 registered wine producers, there are approximately 750 wineries (wine processing facilities), and another 1300 additional producers who may either use contract processing facilities to make wine or purchase bulk wine or a combination of the two. [9] Australian Grape & Wine has not heard of any issues relating to the wine processing market, which has been assumed to mean the provision of contract winemaking services to wine producers, which usually occurs in the case where wine producers do not own their own winemaking equipment. Inquiring about the market for finished products would have returned a more expansive response, as there are significant issues relating to wine retail as outlined in the opening summary. These issues have also been outlined in previous submissions to related inquiries:

- Grape and Wine Sector Regulatory Impact Analysis,
- Competition Policy Review,
- the ACCC Supermarkets Inquiry,
- the Senate Select Committee on Supermarket Pricing,
- the Food and Grocery Code review, and
- the Unfair trading practices: Consultation Regulation Impact Statement.

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6 Estimated based on the number of levy payers
7 Wine Australia National Vintage Reports (2020-2024) https://www.wineaustralia.com/market-insights/national-vintage-report
8 Pers comms. Wine Australia (2024), based on various market research
9 Estimated based on the number of levy payers data supplied by DAFF 23rd October 2023

All are available on the Australian Grape & Wine website.

b. the nature and impact of current market and trading arrangements on the winegrape and wine processing industries;

Market and trading arrangements for winegrape growers are currently influenced from the flow on effects of significant global over supply, which has been exacerbated by import duties on Australian wine to China. These import duties were in place between March 2021 to March 2024. The flow on effect is that winegrape prices in inland regions remain at their lowest level since 2017 and the low prices reflect the financial hardships facing most of the wine sector as has been outlined.

A comprehensive analysis of the winegrape market was conducted between 2018 and 19 by the ACCC. This study delivered a range of recommendations. Since this period, and despite the duress many in the industry are experiencing, circumstances with regard to commercial relationships have improved. For example, at the time there were forty-four signatories to the voluntary Code of Conduct for Australian Winegrape Purchases (the Code) and only three of the top five producers. Today there eighty-three signatories to the Code and all of the top five producers by intake are signatories. There are some significant other improvements including those referenced in the ACCC follow up report and summarised below. [10] The continuous improvement cycle is one that remains in place. The Code Management Committee, comprised of equal numbers of grape grower and winemaker representatives, meets three times per year and engages in active discussions regarding improvements to the Code. Being industry led, it is able to be responsive as new information becomes available.

Following the ACCC final report, the ACCC worked with wineries to review their contracts to remove potentially unfair clauses such as unilateral variations to supply agreements. Unfair Contract Term (UTC) legislation now makes UCTs illegal, attracting substantial penalties for businesses that are found to have unfair terms in their contracts. The new legal framework for dealing with UTCs (in the context of the wine sector) has not yet been tested in the courts.

At the time of the ACCC review, Industry Endorsed Standard Procedures (IESPs) for winegrape quality assessments did not exist. Now the key maturity, purity and condition standards that are likely to be found in grower supply agreements either have IESPs or guidelines for winemakers and growers to make their assessments in a way that is as objective and reliable as possible. These resources are available on the Australian Grape & Wine website. [11]

The ACCC in its Winegrape Market Study (2019) acknowledged the significant risk that winemakers bear in their dealings with buyers due to lack of certainty regarding volumes and pricing, particularly where they suffer the risk of products being de-listed at short notice. The ACCC also highlighted a lack of market price transparency. This has since been addressed in the Code through the replacement of indicative pricing with actual price offers. Additional information is now available to assist growers to understand pricing indicators. Further details are outlined in the next section.

[10] https://www.accc.gov.au/by-industry/agriculture/wine-grape-market-study-2018-19-0/follow-up-report
[11] https://www.agw.org.au/industry-resources/winegrape-quality-assessment/

Whilst the Australian Grape & Wine position has been that the voluntary Code has worked well in its objective of improving business conduct, it is acknowledged that there are concerns being voiced in segments of the winegrape community. Whether these are isolated incidents or relatively widespread has been difficult to determine based on hearsay alone. Known concerns are that the dispute resolution process for "Fair Market Price" assessments has been under-utilised and there are deficiencies with regards to the impacts of harvest delays on growers and the impact that timing of grape quality assessments can have on decisions for rejection or downgrades. This is something that could be addressed not just through a prescribed Code, but also through the existing voluntary Code, albeit that a challenge with the latter is lack of financial penalties.

In considering the characteristics of both winegrape and wine markets, it is important understand the extended lead times that can occur from grape purchase through to bottle compared to other horticultural crops or other beverages such as beer. To produce a premium red wine for example, two years in barrel and one year in bottle prior to sale is a common approach. Beer, on the other hand, can be produced in a month, so can respond quickly to market forces. Long lead times mean that for wine producers, if a major retailer delists a product at short notice it comes with serious and potentially devastating financial consequences. Given the market dominance there are few alternate sales channels for any significant volumes of stock, so limited ability to redirect products to recover costs. Winegrape growers also only produce one crop per year (that is assuming it isn't lost to frost, hail or disease). They suffer similarly long lead times between incurring production costs and receiving a return so those who produce grapes without a fixed price supply agreement also bear significant financial risk.

Low pricing and margin erosion are common complaints throughout the wine supply chain. However, margins made by the supermarkets on wine are high (margins of 40% and more have been reported). It is our understanding that this is much higher than most other alcohol beverages and food products. Retailers can either de-list winemaker owned brands or they can discontinue dealing with a winemaker that had been supplying wine for one of their buyer's own branded wines, often the volumes of wine impacted are significant in scale. There is a concern that products are de-listed simply to be replaced with one of the retailers' own products. Winemakers are of the view that this contributes to challenges in forecasting grape supply and price and are seeking measures to improve this situation. At the very least, there should be a requirement for the parties to a supply arrangement of core ranged products to negotiate in good faith a pre-agreed notice period for de-listings where there is an expectation of ongoing supply.

Another concern is that unlike other wine producers, a vertically integrated retailer can transfer, or create an internal sale, between their own branded wine and their retail store at a cost exclusive of marketing, distribution and storage. The implication of such an inconsistency would be inconsequential if it were not for the fact that it is permissible that they then calculate wine equalisation tax on that substantially deflated notional wholesale value.

The oligopolistic nature of wine retailing in Australia is almost certainly impacting competition. A critical concern is that the large retailers use their market power to gain competitive advantage for their own brands. Retailers can do this through their privileged degree of market insight or by leading consumers towards choices they might not otherwise make by manipulating store layout, product placement and various other forms of choice editing. Retailers can interrogate search data and in-store sales data to act quickly on market signals to identify what inventory they should be holding and to be early movers when an alternative wine style or variety is taking off. Their respective customer loyalty programs generate data relating to customer demographics and geodemographics, purchasing patterns and other insights that allow them to build stronger relationships with the consumer base. This type and extent of data is not available to their supplier competitors who have much less transparency over the market trends or about how their products are performing compared to others in the relevant category. They have also reportedly asked wine producers to provide them production cost evidence as part of commercial negotiations. These information asymmetries mean that retailers' privately owned brands have an unfair advantage over equally efficient competitors. Vertical integration of the supply chain now sees retailers owning hundreds of their own wine brands. The Real Review lists the brands now owned by retailers. [12] Further information is provided in the Australian Grape & Wine submission to the Grape and Wine Regulatory Impact Analysis being led by Dr Craig Emerson.

c. the impact of the current market structure on employment conditions for workers in the supply chain;

Australian Grape & Wine is not aware of any impacts on workers in the supply chain however will draw to the committee's attention that it represents businesses not their employees. In terms of growers and winemakers, there is strong evidence that the current downturn is having mental health impacts on business owners and other support businesses in regional communities. This was evident at a recent town meeting event held in Renmark and is documented in a report into the financial stability of Riverina growers which covered mental health, attitudes towards industry and region, and succession planning for businesses. Many growers reported a sense of pessimism surrounding their businesses, but an attachment to their region. A sense of stress, worry, and low mood was also pervasive throughout responses. [13] A report by the Winegrape Council of South Australia found that nineteen percent of growers had concerns about their health and wellbeing.

Given that there are many grape and wine businesses that are small in scale, most would employ only small teams of permanent staff. Some of the smaller vineyards would be owner operated. That said, the industry is reasonably intensive in its need for labour compared to other agriculture sectors and has significant flow on effects to other sectors such as tourism and businesses that support the many wine regions and their economies. According to South Australian Wine Industry Association, many businesses face difficulties accessing and attracting unskilled, semi-skilled and skilled labour on a temporary or permanent basis and restricted labour availability has a negative effect on their businesses. [14] The seasonal nature of both winemaking and viticulture means that labour demands vary significantly throughout the year, so visa holders play an important role in meeting these demands.

d. the availability, transparency and accessibility of winegrape market price information and its effectiveness in forecasting winegrape prices and demand;

Lack of price transparency has in the past been recognised as a problem in the winegrape market. Lack of retail market price transparency has contributed to this. Australian Grape and Wine has responded to ACCC advice from the Winegrape Market Study released in 2019 by adapting the Code and through promoting the development of supporting materials to improve transparency in fair market price assessments. Through the Australian Government's Improving Market Transparency in Perishable Agricultural Good Industries initiative a consortium comprising Australian Grape & Wine, the Inland Wine Regions Alliance and Wine Australia has undertaken a project that has seen the release of an online wine grape price indicator platform and a suite of price indicators, to help

[12] https://www.therealreview.com/who-makes-my-wine/
[13] https://www.wineaustralia.com/getmedia/274bdf70-343a-4b55-b1b5-3cb49a69fb16/20230601-CSU-2201_FINAL_REPORT.pdf
[14] 2023 South Australian Wine Industry Snapshot

inform business decision-making. The launch of the platform in October 2023 means that winegrape growers now have access to timely and reliable market trends so they can better understand the market. According to Wine Australia, the platform had 2390 views in the 6 months to July 2024. Under that project and in partnership with ABARES independent winegrape price forecasts and commodity analysis for commercial grapes are now released each quarter. The first forecast came out in September 2023 and accurately forecasted wine grape production to remain steady at 1.43 million tonnes which was the same as the estimated actual based on Wine Australia's national crush survey vintage report. ABARES overall average value forecast of $619 was also very close to the actual post-vintage estimate of $613 per tonne. These reports continue to be released on a quarterly basis. Given the recency of these significant advancements in winegrape market price transparency, it is likely that the benefits are yet to be realised by many growers.

If measures were to be put in place to deal with price transparency and fairness in grower contracts, they need only be applied at the time that the agreement is entered into (consistent with the voluntary Code, written agreements must be in place for all purchases). Furthermore, they should not restrict a winemaker's ability to offer quality related price upgrades. An unintended consequence of such a measure could be to reduce the incentive for growers to grow, and be rewarded for, quality. Pricing downgrades due to failure of grapes to reach maturity, purity and condition are required in certain circumstances. Removing the right for winemakers to do so could impact the quality of Australian wine. Nevertheless, circumstances for doing so could be strengthened so that they are clearly defined without ambiguity in terms of timing or assessment methods. Careful consideration must also be given to the fact that many wine producers are producing a product without knowing whether the retailer it is intended for will buy the product, hence the critical importance of a whole of supply chain approach.

e. the effectiveness of the current administration of the code;

Australian Grape & Wine has a well-defined governance structure for the appointment of a Code Management Committee that is responsible for the administration and business operations of the Code. As per advice provided by the ACCC, not only must the committee have equal representation of winemaker and grower members, but it is appointed by a sub-committee of the Board that also has equal representation of winemakers and growers.

The Code sets minimum standards relating to what must be included in a grower supply agreement including clauses relating to grape quality assessment for the purpose of affecting price, mechanisms for determining price and minimum payment terms. It contains a dispute resolution process. Recommendations from the ACCC were taken very seriously and as a consequence there has been a raft of improvements to the Code, more signatories and new resources available for growers and wine producers. These include templates to assist winemakers to incorporate the Code into their agreements and to ensure that last minute purchases are backed up with a written agreement containing all the mandatory information required under the Code. These tools and templates are available to all of industry including signatories and non-signatories to the Code.

The Code Management Committee retains an arm's length relationship employing a Code Secretariat through Australian Grape & Wine as a point of contact for parties to a dispute. It should be noted that as the Code covers contractual agreements, common complaints relating to low prices or failure of wine producers to pay according to the terms in their contract are beyond the scope of the Code.

The Code Committee meets regularly (approximately three times per year) to monitor the operation of the Code and recommend any amendments to the Code that may assist in its operation. The Code has put considerable efforts into increasing the coverage of the Code leading to an increased uptake from 44 to 83 Signatories over the last five years. These efforts have included letters and phone calls by Australian Grape & Wine's CEO, peer-to-peer company recruitment efforts, and several webinars.

Australian Grape & Wine does not possess data on the number of grapes purchased by Signatories. It is only Wine Australia that collect data to the level of granularity required to separate total grape purchases by signatory versus by non-signatories from winery owned intakes, noting that the latter are not relevant to determining Code coverage. They were not prepared to share this for privacy reasons. Based on disaggregated data that was publicly available, it can be deduced that the top five producers by grape intake are all signatories to the Code. [15] Their collectively intake alone accounts for approximately fifty percent of grapes grown in Australia. [16] With these figures along with the 78 other signatories, the percentage of grapes that are purchased by signatories is likely to be well in excess of this.

Australian Grape & Wine is very satisfied with the significant work that Code Committee members contribute to the industry in managing the Code as well as the progress that has been made in strengthening the Code and improving uptake.

Australian Grape & Wine is not aware of any complaints relating to the dispute resolution process under the Code however remains concerned that the Secretariat does not report receiving more disputes given the evidence that has led to this review. There are several potential explanations for this. One is that winegrape growers supplying to Code signatories are content with their dealings with those winemakers. Another potential explanation is fear of retribution, however this is anecdotal and difficult to prove. By all accounts, its dispute resolution procedures, when utilised, have been effective. Some potential disputes are resolved during a preliminary discussion with the Code secretariat and others go to independent determinations that as far as we are aware have been abided by. Both Australian Grape & Wine and the Code Management Committee continues to explore measures to encourage better use of the dispute process.

In 2023 Australian Grape & Wine became aware of one significant dispute between a large winemaker and a cooperative of growers. Despite the wine producer being a signatory to the Code, hearsay suggests that the cooperative had their own private dispute resolution process which was used in preference to the Code. This is allowable under the Code on the proviso that is at least as rigorous as the procedures set out in the Code.

Australian Grape & Wine does not believe that the number of signatories to the Code is sufficient and remains concerned about the behaviours of non-signatories. However, there are strong measures currently in place that will address this issue. One of the most significant policy changes is a new requirement on producers wishing to gain certification under the industry sustainability Standard that they must be a signatory to the Code. This means that in time to carry a Sustainable Winegrowing Australia logo on a wine label, a wine producer who purchases grapes must become a signatory. This was a resolution of the Australian Grape & Wine Board stemming from a recommendation by the Code Management Committee. There is tremendous strength in this measure for gaining

[15] https://winetitles.com.au/statistics-2/wine-companies/australias-largest-wine-companies-by-winegrape-intake/
[16] The top 5 producers are based on latest estimates by Winetitles (2022) Australia's largest wine companies by winegrape intake - Winetitles and Wine Australia national vintage report (2022)

signatories. Sustainability is fast becoming a market access requirement and is already being included as a criterion for tenders to some major wine retailers overseas. Australian Grape & Wine hopes and expects that this will markedly expediate uptake of the voluntary Code. Once a significant number of producers are signatories to the Code, the Committee will be in a better position to consider strengthening aspects of the Code such as payment terms. The next Code review is due in 2026, however the Committee is at liberty to undertake a review at any time. Another recent aggressive move to increase signatories is that Australian Grape & Wine has a new policy that all its Board membership committees must be signatories. This will come into effect with the next round of elections in November 2024.

The Code goes some way towards addressing bargaining power imbalances. It requires that signatories deal with growers in good faith, it requires that agreements are in writing avoiding ambiguity or vagueness, it prohibits unfair contract terms, including those involving unilateral variations and it discourages lengthy payment terms. As stated previously, the provisions regarding payment terms could be strengthened, however this is complicated by the fact that existing South Australian legislation explicitly permits the same payment terms that are a minimum requirement of Code signatories. Long production times of up to three years from purchase of grapes to the final bottled product also has an influence on the grape payment terms, particularly for the premium red wines. This was discussed in more detail in (b).

f. the adequacy of winegrape and wine industry representation at regional, state and national levels;

Despite its challenges, the Australian wine industry enjoys strong and supportive industry culture, healthy collaboration and competition and strong camaraderie amongst its many players. Its sixty-five regions generally work well together and many have very strong networks with each other and within their regions. In 2018 the industry was able to successfully bring together the winemaker representative body, Winemakers' Federation of Australia and the grower representative body Wine Grape Growers Australia (trading as Australian Vignerons) to form a united peak body Australian Grape & Wine. This decision was influenced by encouragement from the Government of the day and was by all accounts a very amicable union that has resulted in a strengthened relationship between growers and winemakers. The majority of South Australian grape growers are members of Australian Grape & Wine through the Winegrape Council of SA. At a regional and state level, many associations also include winemakers and growers working together in the one association. Inland regions in Victoria and New South Wales that represent only growers have a different funding model that places some limits on the use of funds for advocacy and although they are not members, there is a close and supportive working relationship.

Whether it be the inland grower groups or individuals, as an organisation, Australian Grape & Wine endeavours to remain inclusive and open to bringing people inside the tent and as a consequence there is an extensive network of people involved in decision making. These people enthusiastically support a united grape and wine industry. The experience of working with this industry is generally that it is one of generosity. Generosity in terms of peoples' time, their propensity to share expertise and their ability to negotiate for outcomes that are mutually beneficial. The carefully thought-out committee structures and other forms of engagement provide opportunity for members and non-members of Australian Grape & Wine to express their opinions. There is always healthy debate aimed at pragmatic outcomes, with participants showing an understanding of the diversity of the industry and the constant need to compromise on issues towards a collective vision that is best for all of industry. The types of industry players that go directly to Government to advocate in their own best interest, have generally not attempted to engage through these formal mechanisms.

According to the Statutory Funding Agreement entered into under section 35(1C) of the Wine Australia Act there is a prohibition on "Agri-Political Activity", a situation common across most primary industry statutory levies. This situation is different in New Zealand where there is the one organisation giving all wine and grape producers a voice. For this reason, in Australia, agricultural peak bodies such as Australian Grape & Wine are membership organisations relying on voluntary contributions. A value proposition to Australian Grape & Wine members is their opportunity to contribute to a collective voice. Those who choose not to join as members may feel that they miss out on having their voice heard to some extent, however Australian Grape & Wine has always maintained an open approach in how it operates and in its industry leadership. For example, industry news through the Member Bites is open access. Where appropriate non-members attend advisory committee meetings and the phone lines are always open to any Australian wine or winegrape producer as well as other stakeholders. Regardless of the quantum of the various financial contributions to the organisation, the Australian Grape & Wine Board has equal number of small, medium and large winemakers and winegrape growers, with policy decisions taken by the Australian Grape & Wine Board requiring eighty percent support, ensuring no single category can dominate the decision-making process and guaranteeing policy is supported by all and therefore only determined if it provides significant industry benefit. In practice, most decisions are determined by consensus. In line with Board policy and reflected in committee terms of reference, there is a strong imperative to ensure diversity from a range of perspectives including across businesses and business type.

The existence of both a national organisation and state organisations is a direct reflection of the federated political system in Australia. The regional associations tend to have quite a different mode of operation engaging more in regional promotion, networking and local research and extension issues more so than advocacy. Many are run by volunteers. Australian Grape & Wine will refrain from detailed commentary on the adequacy of state and regional representation and leave this to those organisations. By all accounts, they are valued by their respective members and the relationship between Australian Grape & Wine and state and regional associations is strong.

To look at representation in terms of how industries statutory levies are collected, the top twenty winemakers contribute about forty-four per cent to the overall quantum of marketing and research and innovation levies. Growers who do not produce wine contribute about nineteen percent towards research and innovation only, however viticulture research accounts for the lion's share of levy funds, reflecting the importance of fruit quality to winemakers. The grape crush value of the 2024 vintage has been estimated to be $1.01 billion in 2024 and the most recent report on total wine sales at $4.99 billion. [17] [18] The top twenty producers account for seventy percent of those wine sales and about eighty five percent of the reported crush across Australia was by wineries in the above 10 000 tonne size category.

[17] Wine Australia (2024) National Vintage Survey
[18] Wine Australia (2023) Australian Wine: Production, Sales and Inventory 2022–23

g. policy and regulatory options to improve market competition and address any inequities, including the potential benefits and limitations of a mandatory code, and the applicability of existing mandatory codes of conduct in other primary industries;

Australian Grape & Wine supports any recommendation relating to strengthening aspects of the Code, on the proviso that winemakers have access to those same privileges in their own markets. There are other important considerations in doing so as have been outlined in this submission. It is expected that there will be an increase in uptake from measures outlined in (e).

At this point in time, Australian Grape & Wine does not see a strong evidentiary basis to support a mandatory Code of conduct, nor regulation of the industry through a prescribed voluntary Code. The improvements in the winegrape market flowing from the 2019 ACCC winegrape market study along with recent strengthening of UCT legislation are yet to be fully realised. It would therefore be premature to impose a regulatory and compliance burden at this point in time. The extent of the problem is heavily influenced by the current economic climate facing the wine sector. A prescribed or mandatory Code is unlikely to solve the problem that producers under financial duress are unable to pay. Furthermore, given the large number of very small wine producers that make up this industry, benefits are unlikely to justify the cost to both the Government and industry.

Moreover, grave concerns are held for the unintended consequences of introducing regulations to the winegrape market without addressing the contributing issues downstream in the wine liquor retail market. Thus, Australian Grape & Wine would be more open to regulatory intervention if it was based on a whole of supply chain approach and a very careful analysis of pros, cons and consequences through widespread consultation on any proposed regulatory measures.

The underlying assumption in this submission is that the ultimate issue that has contributed to this inquiry is driven by low pricing for grapes. Regulation should not, and nor can it, attempt to fix this. There are limited viable options to address grape pricing in the industry, including requiring earlier pricing announcements for all forward supply contracts (which could be subject to meeting quality specifications) or introducing the requirement to set a base price. Whilst this is worth exploring, in the current climate, regulating prices in contracts could discourage winemakers from entering into agreements in the first place, and instead see a shift to 'spot market' last minute purchasing strategies. Anecdotal evidence from producers confirms that this is a likely response.

Another option for regulating price would be to require earlier price announcements for *all* grape transactions such as is the case with the Dairy Code. Australian Grape & Wine contends that such a model would be disastrous for winegrapes. Not only is wine far further removed from being commodity like in nature, but it would be perilous to impose this on an industry that lacks equivalent luxury of knowing their prospects downstream of the supply chain. Given the inadequacy in information about the wine wholesale and retail market an obvious response by winemakers would be to transact at a different part of the supply chain such as by purchasing bulk wine. Others might simply shut down operations. Such a shift may prove difficult for growers to cope with and have significant unintended consequences. Another regulation Australian Grape & Wine does not support is that suggested by the ACCC in its Winegrape Market study that Wine Australia be given legislative powers to compel winemakers to provide price information, and to allow the information to be audited. This was to be accompanied by a requirement that there be amendments to the Code and to all variable price supply agreements, to allow growers to lodge a price dispute up to three weeks after Wine Australia publishes this price information, to assist with dispute resolution in relation to variable 'fair market' price terms. The Code committee discussed this recommendation at length and it was one of the very few that they rejected. Their reasoning was two-fold. First and foremost, it was felt by both winemakers and growers that three weeks after Wine Australia publishes the information (usually in June) was far too late to leave pricing disputes unresolved. Winemakers also expressed concerns about making that information publicly available to the retailers who were already squeezing margins.

Furthermore, any reform aimed at resolving the nexus between price and quality could create more uncertainty, reduce competition, stifle innovation and/or be difficult to enforce. A winemaker's ability to offer quality related price upgrades must remain in place and pricing downgrades due to failure of grapes to reach maturity, purity and condition must remain allowable due to the devastating impact these liberties could have on Australian wine if removed. Imposing a threat of financial penalties onto winemakers could enhance the fear of retribution that potentially deters growers from entering a dispute and in any event would be difficult for a court to prove.

While there is evidence that payment terms in grower supply agreements have been shortened by many of the larger producers, Australian Grape & Wine does hold concerns that the terms on offer by some wine producers are a residual issue, particularly when those wine producers fail to take account of the principle that money is worth more the sooner it is received. Under the Code, the minimum standard reflects SA legislation and lengthy payment terms are discouraged. Signatories may negotiate different payment terms provided that that alternative position is at least as attractive to the Grower. A complicating factor reported by Dr Emerson in the Grape and Wine RIA consultation paper, is that *The Wine Grapes Industry Act 1991* (SA) which deals with the payment of all wine grapes sold in South Australia states that grape payments must be made in three equal instalments. The first one-third instalment must be paid before the end of the month following the month of delivery, the second one-third instalment must be paid before 30 June in that year and the third one-third instalment must be paid before 30 September in that year. This legislation is not mirrored in the other states and in effect could be misconstrued as endorsing lengthy payments.

h. any other related matters.

It is not clear why this study has chosen to focus on one aspect of the grape to glass supply chain when it has been well-recognised by others (including the Government's very own Grape and Wine RIA), that the problem is systemic throughout the wine supply chain. The fact is that what happens in the winegrape market is a function of what occurs further downstream between wine producers and the major retailers.

The ACCC in its Winegrape Market Study (2019) acknowledged the significant risk that winemakers bear in their dealings with buyers due to lack of certainty regarding volumes and pricing, particularly where they suffer the risk of products being de-listed at short notice. This is yet to be resolved.

There are approximately 1688 very small wine producers across Australia (intake less than 100 tonnes). [19] There is little evidence to suggest that this part of the value-chain is the subject of systemic complaints about commercial dealings. Putting in place any onerous regulation on small businesses would require careful thought and analysis of the benefit cost ratio for these businesses and the economy more broadly. On the other hand, drawing a line

[19] Pers. Comms. Wine Australia: Estimates based on 2024 voluntary crush survey.

between large and small wine businesses would also be a difficult task if a decision was made to introduce a threshold. That approach would not be widely supported.

It would be an oversight to consider wine and the grapes that go into wine as a commodity product. It is important not to stifle innovation or diminish the quest for excellence by removing the ability for winemakers to reward outstanding quality**.** There are over one hundred and sixty different winegrape varieties grown in Australia in sixty-five Geographical Indications (regions). Depending on the winery there may be five different grading classes used for differentiating grapes (A-E). The subjectivity in determining wine excellence, is reflected in the difficulties that come with making meaningful assessments of wine quality, backed up by research which repetitively shows that wine judges are unreliable and unable to provide consistent recommendations relating to quality. [20] [21] A producer looking for grapes to make a full-bodied Shiraz from South Australia may call for certain quality parameters for their highest grading, while a Canberra district producer of the same varietal, at the same grade, may have quite different specifications due to the differing growing conditions and the style of wine being produced. Consumer trends will also lead to different wine style objectives and these will swing over time. Yet, the ability for producers to achieve significant profits from producing superior quality promotes innovation and generates healthy competition and this degree of subjectivity is why wine is considered more like a piece of art than a commodity. This must be considered carefully in designing any regulatory response aimed at fixing low grape prices. It is perhaps for this reason that no other country in the new world has imposed intrusive regulations on the winegrape market.

Finally, if an outcome of this analysis is a recommendation for a mandatory code, albeit not a preferred option, then there should be thorough industry wide consultation on the contents of that code and it is critical that it include the entire supply chain through to retail. The significant work that has been put into the existing voluntary Code, and the learnings along the way should be given due consideration and pros, cons and likely consequences should be carefully scrutinised and conveyed to all stakeholders as part of further consultations.

Australian Grape & Wine would welcome the opportunity to hold further discussions regarding the contents of this submission.

[20] Hodgson, R. (2008). An Examination of Judge Reliability at a major U.S. Wine Competition*. Journal of Wine Economics, 3, 105 - 113. https://doi.org/10.1017/S1931436100001152.
[21] Hodgson, R., & Cao, J. (2013). Criteria for Accrediting Expert Wine Judges*. Journal of Wine Economics, 9, 62 - 74. https://doi.org/10.1017/jwe.2013.26.